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Current Topics.

Magna Carta.

ON 15th June, the 726th anniversary of the signing of Magna Carta was celebrated by a notable B.B.C. broadcast showing how this charter has become an intrinsic part of the common law of England. In 1215, said the commentator, the barons and the clergy faced King John at Runnymede and forced him to grant rights to the free men of England. Although at that time not all the inhabitants of England were free, the effect of Magna Carta had since widened, not only to include the whole population of England but also all liberty-loving people throughout the world. The commentator said that probably the barons who united against the king were building more wisely and more largely than they understood." This concern for liberty, manifest in Magna Carta, in the Bill of Rights, in the Reform Acts of the nineteenth century, and in the Parliament Act, 1911, ensured justice. Less than fifty years after the signing of Magna Carta the great lawyer Bracton explained it to the citizens of London, and it became part of the common law of England. In the American declaration of Independence the rights of life, liberty and property were those of free English citizens. The right to trial by peers was according to the common law of England. In an inspiring address at the conclusion of the programme, the Master of the Rolls, LORD GREENE, said that in the Abbey at Tewkesbury there was the story of the barons at Runnymede on the grave of one of the barons. Though much of the wording had been erased by time, the story ended: "Let the king look to it." In framing the laws of England, said LORD GREENE, we have turned to the spirit of Magna Carta. The State and the ministers of State were ruled by the law of the State, from which they could not depart, whereas dictatorship was responsible to no law. The law of the land protected the individual: dictatorship did not. No government could influence the decisions of the judges in our courts, as dictators did. The law of England was made by Parliament elected by the people, and the supremacy of Parliament and the rule of law together produced freedom. In 1939, said LORD GREENE, LORD LOTHIAN had presented a copy of Magna Carta to the World's Fair at New York, and had remarked that Magna Carta was the foundation of American liberty and our own. It was for this liberty that we were fighting together, and LORD GREENE warned our enemies, "Let them look to it."

War Damage (Amendment) Bill.

DURING the second reading of the War Damage (Amendment) Bill in the Commons on 18th June, a Government amendment to make legal rent-charges and proprietary interests was withdrawn by leave, on account of the difficulties in the way of doing all that was necessary to give equitable treatment to the owners of rent-charges, and on the Attorney-General's assurance that the Commission and expert valuers were going into the matter and a Government amendment would be brought forward in another place to deal with it. An amendment designed to enable the Commissioners of Crown Lands to meet expenses of repair or replacement of buildings under their charge out of capital money, with the consent of the Treasury, was agreed to. Another amendment that was agreed to was one to make it clear that tenancies for the duration of the war and ninety-nine years thereafter would not be treated as short tenancies, although tenancies for the duration of the war and not more than seven years thereafter would be so treated. A strong plea for housing associations was put forward during the course of a debate on an amendment to limit the contribution which should be made in the case of housing associations. Sir KINGSLEY WOOD, however, stated that the particular amendment was not successful, as it opened the door very wide indeed, and any builder who operated under the Housing (Financial Provisions) Act, 1933, would be able to obtain the same advantage as it was desired to give to the housing associations, which, the Chancellor reminded the House, were not entirely charitable organisations, but were permitted to have an interest or dividend, subject to limits prescribed by the Treasury. Difficulties of housing associations and others in meeting their liabilities as they fell due out of income or other resources were given the greatest consideration by the Commissioners of Inland Revenue, who were prepared in proper cases to consider proposals for the extension of the time for payment. On a division the amendment was negatived by ninety-eight votes to forty-three. The Bill was read a third time and passed.

Ministry of Works and Planning Bill.

ON the second reading of the Ministry of Works and Planning Bill in the House of Lords on 17th June, LORD PORTAL explained that it was only a first step in carrying out the policy of the Government announced by his predecessor on 11th February last. It provided for the transfer of certain properties and functions to the Minister of Works and Planning, when he is appointed. Before legislation to strengthen and extend the existing law could be introduced it was essential to have the final report of Mr. Justice UTHWATT's Committee and of Lord Justice SCOTT's Committee, which he was pleased to tell the House were now near completion. LORD REITH, however, had taken the view that in planning the reconstruction of the London region a beginning should be made with the central areas, particularly in view of the fact that enemy bombing had been largely concentrated at the centre. Accordingly, the Corporation of the City of London and the London County Council had, on the Minister's invitation, commenced provisional plans which were now in an advanced stage of preparation. LORD PORTAL also stated that he had referred the matter of planning the area surrounding the County of London, which in many ways formed a composite whole with the City and County, to the Standing Conference on London Regional Planning. As a result of a recommendation from the committee he had appointed Professor ABERCROMBIE to prepare a comprehensive plan for the whole region. The professor was already preparing the redevelopment plan for the County of London as consultant to the London County Council. In the course of the ensuing debate VISCOUNT SAMUEL stressed the fact that while we could not do for planning purposes with the areas which we had, at the same time we could not wait to remodel our local government areas in general, but must make shift with the system of joint committees. LORD LATHAM, however, criticised the joint committees, and emphasised the urgency of reorganising the areas. VISCOUNT GAGE, while admitting that the number of private areas was one of the difficulties, could not call to mind any plan, at least in a rural area, which had really been held up because of private ownership of land. On question the Bill was read a second time and committed to a Committee of the whole House.

Price Control.

AN interesting contribution to the price control problem, to which we referred in a previous issue (*ante*, p. 164), comes from a correspondent. The case which gave rise to the problem was one in which a firm of provision dealers and two hotel companies had been fined for selling and buying roasting chickens at excessive prices, and it was held that the dealers were not entitled to add delivery charges to the maximum price. In the recent Topic, we referred to Sched. I of the Price of Goods (Control) Act, 1939, which sets out a number of items of cost which must be taken into account in fixing the permitted increase over the basic price permitted to goods controlled under that Act. Our correspondent writes submitting that the provisions of the 1939 Act

should not be considered when endeavouring to construe a statutory rule and order under which a maximum price of any commodity is prescribed. He states that the Poultry (Maximum Prices) Order was not made under the 1939 Act, but under the Defence (General) Regulations, 1939, reg. 55, which lays down no basis on which maximum prices are to be determined, and this is therefore left in such cases to the discretion of the competent authority, in this case the Minister of Food. It is well known, he adds, that prices prescribed under the regulations are sometimes considerably less than those which could have been prescribed under the 1939 Act, and he suggests therefore that although transport charges are allowed for under the 1939 Act they are not necessarily part of the integral price of a commodity as fixed under a statutory rule and order. We had no intention of creating the impression that poultry was controlled under the 1939 Act, but merely referred to it in order to give an example of the sort of matters which recent legislation considered should be included in the maximum price. In any case under the Poultry (Maximum Prices) (No. 2) Order, 1941, art. 3 (1), the maximum price applicable on a first hand sale is fixed on the basis of delivery being given by the seller at the buyer's premises, and includes all costs and charges of and incidental to such delivery and no additional charge shall be made by the seller in respect of delivery. Under art. 3 (2) a reasonable charge may be made in addition to the maximum price for delivery in certain circumstances when the sale is by wholesale. While there may be a prevailing impression that prices controlled under reg. 55 are lower than they would be if controlled under the 1939 Act, even if this could be proved in every case it would not go the length of proving that delivery charges have not been taken into account. We are indebted to our contributor for drawing attention to a matter which may have caused a certain amount of misunderstanding, and we are likewise grateful for a further point which he raised in his letter, namely, that it might be argued that if the Minister of Food by statutory rule and order made after the date of the passing of the Price of Goods Act prescribes a lesser maximum price than that which could have been prescribed under that Act, he is acting *ultra vires* on the ground that it is repugnant to the general law (*Bentham* v. *Hoyle*, 3 Q.B.D. 293). The answer probably is that the 1939 Act does not create general law, but applies only to those particular commodities which become controlled by order made under that Act. It has been found administratively necessary for the Ministry of Food to decree the price control of certain articles, and the conflict, if any, is not legislative, but administrative, and even so is not a real conflict, as it has resulted in a necessary division of labour between the Ministry of Food and the Board of Trade.

Solicitors' Compensation Fund Rules.

THE Council of the Law Society announces in the current issue of *The Law Society's Gazette* that the draft rules to give effect to s. 2 and the First Schedule of the Solicitors Act, 1941 (*ante*, p. 29), have now been finally settled, after careful consideration by the council of the comments and suggestions of many provincial law societies, the City of London Solicitors' Company, and individual members. The rules do not come into operation until s. 2 of the Act comes into force, and the council are asking the Lord Chancellor to make an order bringing the section into force on 16th November, 1942, the date when the practice year 1942–43 begins. A salutary amendment of the rules enables the Council to waive the provisions of any of the rules. Under the original draft it could waive any rule except that which requires the loser to complete, sign and deliver to the Secretary a notice in the prescribed form or a form approved by the council, within six months or such other period not exceeding three years as the council may allow in any particular case, after the loss in respect of which the notice is delivered first came to the knowledge of the loser. Apart from this important amendment, which removes the somewhat rigid time limit on applications for compensation, the rules appear to be substantially the same as in the original draft.

Deferment and Articled Clerks.

AN appeal by the Minister of Labour and National Service to the Deputy Umpire in a case in which an articled clerk asked for postponement in order to sit for The Law Society's Intermediate Examination is reported in *The Law Society's Gazette* for June (No. 1085/42 (N.S.)). The applicant was born in January, 1923, and entered into articles in August, 1940. He intended to take the Society's Intermediate Examination in June, 1942, but in December, 1941, the Society decided not to hold an Intermediate Examination in June, 1942, but only in March and October. On 13th December, 1941, the applicant registered for service. He sat for the March examination, but failed, as he was not ready for it. The Military Service (Hardship) Committee decided in favour of the articled clerk, and this decision was upheld by the Deputy Umpire on the ground that the decision to cancel the June examination was a "specific circumstance" which justified the finding that if the other conditions of the test of exceptional hardship as stated in decision 1529/40 (N.S.) (see *The Law Society's Gazette* for July, 1940, p. 128) were fulfilled in the applicant's case, he would suffer exceptional hardship, if a postponement certificate were refused on the ground that the third condition was not satisfied, because the October examination would not commence within nine months of the date of registration. The remaining four conditions were in fact satisfied in the case in question, unless the applicant could obtain exemption from the Intermediate Examination. On the hearing of the appeal a former President of The Law Society gave evidence to the effect that no general principles relating to the exemption from the Intermediate Examination during the war had been laid down by the Council, that each application for exemption was considered on its merits, and that in no case had exemption been granted from the trust accounts and book-keeping portion of the Intermediate Examination. The Minister's appeal was therefore dismissed, and the applicant received postponement for six months with liberty to apply for a further period of postponement in order to sit for the Intermediate Examination to be held in October, 1942.

Service Vehicles and Traffic Accidents.

IN a recent announcement by the Claims Commission, which was constituted in November, 1940, to deal with claims made against the War Department, it is stated that the Commission has been entrusted with the settlement of claims arising out of traffic accidents occurring on or after 1st June, 1942, involving vehicles owned, used or controlled by the Air Ministry, Royal Air Force or Ministry of Aircraft Production. Drivers of these vehicles, as well as drivers of War Department vehicles, have instructions to comply with s. 22 of the Road Traffic Act, 1930, which imposes a duty to stop in case of accident and give particulars. In correspondence in connection with such accidents, which should be addressed to the Secretary, Claims Commission, Wing House, Piccadilly, London, W.1 (Telephone, Regent 8131), full particulars of any injuries alleged to have arisen out of the accident should be given, together with the address at which the injured person may be examined, if necessary. In the case of damage to a vehicle the following information is required: (i) the name and address of the insurance company covering the vehicle; (ii) the number of the policy; (iii) whether this is comprehensive, third party or road traffic liability only; and (iv) the amount of the excess (if any). All particulars given by the driver at the time of the accident should also be quoted. Another recent announcement relating to accidents involving service vehicles is that in future any person whose claim has been repudiated on the ground that the driver was driving under such circumstances that a private employer would not have been liable for his negligence, if any, and who desires that his case should be submitted to the independent legal referee who, as announced by the Lord Chancellor in the House of Lords on 13th April, has been nominated by the Lord Chancellor to settle this issue without cost to the claimant, should write to the department concerned, with a request to that effect. In cases involving War Department, Air Ministry, Royal Air Force and Ministry of Aircraft Production vehicles the request should be made to the Secretary of the Claims Commission, and the claimant or his solicitors will then be furnished with full particulars of the procedure to be followed.

Recent Decisions.

In *The Oropesa*, on 23rd June (*The Times*, 24th June), LANGTON, J., held, where a ship's engineer lost his life owing to the capsizing in rough weather of a lifeboat which the ship's master had taken out one hour and twenty minutes after a collision with another vessel, in order to discuss salvage measures with the master of the other vessel, that the engineer's death was directly caused by the collision, and that, therefore, his dependents and administrators were entitled to succeed in an action brought against the shipowners under the Fatal Accidents Act, 1846, and the Law Reform (Miscellaneous Provisions) Act, 1934.

In *Knight* v. *Great Western Railway Co.*, on 24th June (*The Times*, 25th June), TUCKER, J., held that the driver of a railway engine, who knew that the signals were in his favour, was not negligent merely because of his approaching a level crossing at a speed at which he could not pull up within his field of vision. The plaintiff unsuccessfully claimed damages for the loss of eight animals, the level crossing on which they were killed being one which he had a private right to use. His lordship said that the degree of care required might vary very considerably according to whether the crossing was one over which the public had a right to pass, or, in this case, a private accommodation crossing for the use of an adjoining occupier.

In *In re Butler's Settlement Trusts, Lloyds Bank, Ltd.* v. *Ford*, on 25th June (*The Times*, 26th June), BENNETT, J., adjourned two summonses to determine the construction of a will on the question of the destination of certain settled funds payable to a pilot officer in the R.A.F. Volunteer Reserve who was reported missing during operations in June, 1940. His lordship asked that further evidence should be available as to the circumstances of the presumed death as "there have been some people about whom these certificates have been issued who have subsequently turned out to be alive."

A Conveyancer's Diary.

War Damage Contribution: Apportionment.—III.

SINCE the appearance of my last article on the apportionment of War Damage Contribution between vendor and purchaser, the law has been clarified by the judgment of Farwell, J., in *Re Jacob's and Stedman's Contract.** The case is not yet in the Law Reports or *Weekly Notes*, but a report of it has appeared in *The Times* newspaper, and I have before me a transcript of the shorthand note of the judgment.

It will be remembered that there was a large measure of agreement in the profession on two points: (1) that it is possible to make war damage contribution apportionable by an express stipulation, but (2) that in the absence of an express provision (*a*) the totality of the five instalments of contribution under the original War Damage Act is never apportionable, whether by reference to the original risk period or otherwise, either on an open contract (by correspondence or not) or on a contract incorporating The Law Society's Conditions or the National Conditions, and (*b*) that the instalment of contribution due in the calendar year of completion is never apportionable under an open contract not by correspondence.

There remained two outstanding questions: in the absence of express stipulation is the instalment of contribution due in the calendar year of completion apportionable on (*a*) an open contract by correspondence, and (*b*) a contract incorporating The Law Society's Conditions or the National Conditions. There is, I think, no suggestion, nor can there reasonably be any, that there is any difference for the present purpose between the effect of the two well-known stock forms of conditions or between either of them and the statutory conditions applicable to an open contract by correspondence. It will be convenient, therefore, to treat The Law Society's Conditions as typical. The outstanding question of principle was directly put in issue by the declarations asked for in *Re Jacob and Stedman* (set out below), and the answer given to them may thus be taken as disposing of the point finally (unless there is an appeal, which seems improbable).

In *Re Jacob and Stedman* the contract was to sell the fee simple, and was made on 23rd January, 1942. The completion date was ultimately fixed as 25th February, 1942. The only "proprietary interest" within the meaning of the War Damage Act was the fee simple, which was the subject-matter of the sale. Consequently, the vendor, as the tenant in fee simple on 1st January, 1942, was going to be liable to pay to the Crown the instalment of contribution due on 1st July, 1942. The contract incorporated The Law Society's Conditions, the material passage of which was Condition 5 (3) (*a*) and (3) (*b*), which were read by the learned judge in his judgment. They are as follows: "(*a*) A purchaser paying the purchase-money or, where a deposit is paid, the balance thereof, shall (but subject to the execution of any conveyance which ought to be executed by him) as from the date fixed for completion be let into possession or receipt of rents and profits; (*b*) *A purchaser shall, as from that date, pay all outgoings*, and, up to that date, all current rents, and all rates, taxes and other outgoings shall, if necessary, be apportioned, and the balance shall be paid by or allowed to a purchaser on actual completion, and for this purpose a purchaser shall be liable to pay a proportionate part of the current rents accrued in respect of the property, up to and including the date fixed for completion."

The vendor asked in *Re Jacob and Stedman* for a declaration that "on the true construction of the contract (i) the instalment of contribution payable under the War Damage Act, 1941, in respect to the property on the 1st July, 1942 (which the vendor is liable to pay, notwithstanding the said sale, under s. 35 of the said Act to the Commissioners of Inland Revenue), is an outgoing within the meaning of Condition 5 (3) (*b*) of The Law Society's Conditions of Sale, 1934; and (ii) the said contribution ought, as between the vendor and the purchaser, to be apportioned as at the date fixed for completion on the footing that the said instalment is payable in respect of the year 1942." The facts and the summons thus squarely raised the outstanding point of controversy.

Farwell, J., began by reading s. 2 of the Act, which provides that payments shall be made in respect of war damage to land occurring during the risk period, and, at a later stage, mentioned that the second War Damage Act had extended that period. He then read s. 18, which provides that "Contributions towards the expense of making payments under this Part of this Act . . . shall be made in respect of the properties, at the rates, and in the manner" set out in the following sections. He then recited part of s. 19, which defines the "contributory properties," and proceeded with s. 20, whereunder "The contribution in respect of any contributory property shall be payable by five annual instalments becoming due in the year 1941 and each of the four subsequent years." Having pointed out that under s. 23 the owner of the only proprietary interest at 1st January in any year is primarily liable for the instalment of the following July, he finally read s. 82, under which "Contributions made and indemnities given under Part I of this Act, and premiums paid under policies issued under either of the schemes operated under Part II of this Act, *shall be treated for all purposes* as outgoings of a capital nature."

The learned judge then stated the facts and the relief sought, and observed that there was, in the Act itself "nothing which provides for an apportionment of any sort. If, therefore, there ought to be an apportionment, it must be because it is so provided by the contract. There is no doubt that a vendor and a purchaser between themselves can provide in terms that there is to be an apportionment of this particular expense. The question is: Is there such a provision in this particular contract?" He then read the material provisions of Condition 5, set out above. Having done so, he proceeded as follows: "The question really resolves itself into a question whether or not this particular payment is an 'outgoing' within the meaning of the conditions of sale. As I have said, there is nothing in the Act which provides for apportionment at all. If, therefore, there is to be an apportionment, it must be because it is provided for by the contract. The only condition relied on is this condition which I have just read. It is said that the words 'and other outgoings' include the instalment payable under the War Damage Act. In my judgment, the answer to that must be in the negative. The word 'outgoings,' generally speaking, does not include payments of a capital nature. The Act itself has provided, by s. 82, that these payments made under it are to be of a capital nature. I can see no reason whatever for thinking that the word 'outgoings,' as used in this condition, is intended to be used other than in its ordinary general meaning, and it must be confined to payments of a nature which are not capital payments. These are capital payments under the Act; and, accordingly, in my judgment, there is no ground for suggesting that they ought to be apportioned." The learned judge then said that he proposed to dismiss the summons with costs, but he, in fact, made no order as to costs on being informed that an arrangement had been made regarding them. On the request of counsel, he also made a declaration that the instalment of contribution was not an "outgoing" and ought not to be apportioned.

Though this decision is, of course, one *inter partes* and on the words of a particular contract, it seems perfectly clear that it would be impossible to distinguish from it any other case of a sale in fee simple under The Law Society's Conditions, the National Conditions or the Statutory Conditions in the absence of an express stipulation. As it is already common ground that there is no apportionment on an open contract, we reach the position that in the absence of a special stipulation (which is now most unlikely to be agreed upon) war damage contribution is never apportionable. (It is, of course, obvious that if the single instalment due in the year of completion is not apportionable, the totality of instalments cannot be.) It follows that this small, but important and troublesome, controversy should now be stilled. It is gratifying to those of us who have all along maintained the position adopted by Farwell, J., that it should have been resolved as it has been, and it should be remembered that the decision of Farwell, J., upholds, with the authority of the Chancery Division, the judgment, already recorded here, of the learned county court judge at Bishop Auckland.

One consequential point has been put to me, which it may be as well to dispose of so as, I hope, to finalise this discussion. Both the contract date and the date of completion in Farwell, J.'s case were during 1942. I am asked what the position would be where there was a valid contract made in November, 1941, and completed in January, 1942. It is suggested that the instalment of contribution due in July, 1942, falls on the purchaser, as being the equitable owner in fee simple on 1st January, 1942, by virtue of his contract. The answer is that under s. 23 the instalment is payable to the Crown by the "owner" at 1st January of the proprietary interest, if there is only one such interest, and that by s. 45 (1) an "owner" of an interest is he in whom the *legal estate* in the interest is vested. The instalment thus falls on the vendor.

* Reported p. 190, *infra*.

Notes.

Mr. St. John Hutchinson, K.C., has been elected a Master of the Bench of the Middle Temple, and Sir C. Madhavan Nair an Honorary Master.

According to a note in *The Times*, Hackney Borough Council's Legal and Parliamentary Committee have made representations to the Home Secretary objecting to the proposal to close North London Police Court and to transfer its work to the court at Old Street.

As the result of a regrouping of certain county courts the Lord Chancellor has appointed Mr. S. C. Warden, Registrar of the Stratford-on-Avon, Warwick, Redditch and Alcester County Courts, to be in addition the Registrar of Shipston on Stour County Court as from the 22nd June, 1942.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26 Portland Place, W.1 (Tel.: Langham 2127), on Thursday, the 16th July, 1942, immediately following the annual general meeting (which has been fixed for 5.15 p.m.), when the President will deliver his presidential address on "Poisons and Poisoning."

Wills and Bequests.

Mr. John Denis Burch, solicitor, of Bristol, left £18,774 2s. 4d., with net personalty £12,144 14s. 3d.

Mr. Bernard Harpur Drake, C.B.E., solicitor, left £68,935, with net personalty £67,877.

Landlord and Tenant Notebook.

Mesne Tenants and the Increase of Rent, etc., Act, 1939.

In this article I propose to advert to one or two questions which may arise in consequence of the increase in the scope of Rent Act legislation brought about by the Act of 1939.

The old Acts, before the gradual decontrolling process instituted by the 1933 Statute, affected London houses of which either the standard rent or the rateable value had, on 3rd August, 1914, not exceeded £105 ; for houses outside the metropolitan police district the limit was £78. Now, all dwelling-houses in that district with a rateable value not exceeding £100 on 6th April, 1939, and all other houses with a rateable value not exceeding £75 on 1st April, 1939, are controlled, though let at much more.

It follows that houses of a better class than the old Class A are now affected by this restrictive legislation. And it may be that this will give rise to problems of a different kind from those produced by the older Acts.

One such problem may arise in this way. Most of the tenancies protected hitherto were tenancies of " weekly property," under which the landlord was either made responsible for repairs by statute (the Housing Act) or undertook repairs by agreement ; or, if neither, kept the property in repair in his own interest. (Before the days of either Rent Acts or modern housing Acts we had an *obiter dictum*, in *Broggi* v. *Robins* (1899), suggesting that there was virtually a custom obliging landlords of low rental residential property to maintain it in repair.)

But among the houses brought within the scope of the principal Acts by the new statute there may be many which were let on repairing leases and sub-let by agreements which may or may not reproduce the repairing covenants.

Suppose, for example, that L, the owner of a London house rated (before and after 6th April, 1939) at £95, let it to M for a term of seven years, commencing Lady Day, 1937, M covenanting to keep the demised premises in good tenantable repair and condition and in such condition to deliver them up at the termination of the tenancy. In 1939 M, having, perhaps, to move out of town, lets the house to S for the residue of his term, less the last three days. By the spring of 1943 L would normally be feeling dilapidation-minded. He would be contemplating eventually sending his surveyor along to prepare a schedule, either a little before or a little after 25th June.

The Acts protect M, the mesne tenant, from an action for failure to deliver up, as was held in *Reynolds* v. *Bannerman* [1922] 1 K.B. 719 ; but not, of course, against liability under his repairing covenant. Suppose, however, that he contemplates obstructive tactics, pleading that he would himself be prepared to grant facilities but cannot compel the sub-tenant to co-operate ? Up till the date of the expiration of the head lease he may succeed. For, while s. 16 (2) of the 1920 statute enacts : " It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute " (applied to the case by s. 3 of the 1939 Act), it is not easy to see how this gives L any rights, even indirectly, against S. If it is S who is " the tenant " into whose agreement the obligation to grant access is imported by the statute, then M is the landlord, and M, if entitled to access, is not put under any obligation to exercise his rights ; while if he does desire to exercise them, S could still object to entry by L. While if M be the tenant for the purposes of the subsection (some support might be found for this proposition in *Hylton* v. *Heal* [1921] 2 K.B. 445) M could invoke the principle " *lex non cogit ad impossibilia*."

There is, however, one provision which might, in my view, assist L. The definition of " tenant " in s. 12 (1) (*f*) of the 1920 Act provides that the expression shall include " any person from time to time deriving title under the original tenant " ; *ib.*, (*g*) that " tenant " includes " sub-tenant." And s. 16 (2) was at least not among those provisions cited by Rowlatt, J., in the above-mentioned case of examples of provisions demanding a more restricted meaning.

At all events, if when the head lease expires S decides to hold over, it is clear that this will result in his becoming the statutory tenant of L by virtue of s. 15 (3) of the 1920 Act (as applied).

But there is a more serious type of problem which may arise. Suppose the same facts as regards letting and sub-letting, but add that M, while he occupied the dwelling-house, installed certain domestic fixtures—say, a cooker and a bath—which he did not remove when sub-letting to S. because, apart from their enhancing the rental value, he confidently looked forward to removing them in the three days between the expiration of the sub-tenancy and that of the head lease. How does the legislation affect his position ?

Section 15 (3), to which I have alluded, runs as follows : " Where the interest of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued." While by subs. (1) " A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall . . . be entitled to the benefit of the terms and conditions of the original contract of tenancy . . ."

So it looks as if these two subsections between them effectively deprive M of his interest in the cooker and bath. During the three days reserved, S is entitled to the benefit of all the terms and conditions of the original contract of tenancy ; it will be conceded that none of these terms can be more important than the parcels, which included the cooker and bath. For, as was so clearly pointed out by Lord Cairns, L.C., in *Bain* v. *Brand* (1876), 1 A.C. 762, a removable fixture is not a chattel which is capable of becoming realty ; it is realty which may be re-converted into a chattel. The fixture, to use the learned Lord Chancellor's own words, " does become part of the inheritance," and so if M cannot induce S to sever it before the contractual sub-tenancy expires S is entitled to retain it with the rest of the premises. Then, the head lease having determined, M is graciously relieved of all further obligation towards either L or S ; he is, as regards the Rent, etc., Restrictions Acts, *functus officio*, as it were ; but he has no further rights either, and he may even experience the mortification of finding that S has, shortly after becoming L's statutory tenant, surrendered that tenancy and the cooker and the bath to L for valuable consideration.

Comment on what the law should be is normally outside my own function, but I think it may fairly be remarked that our legislators were for a long time probably under an illusion about the limits of the rules governing removable fixtures. I think it is right to say that their disillusionment led to one of the provisions of the War Damage Act, 1941, namely, that of s. 71, as well as being responsible for some of the special provisions in the more recent Landlord and Tenant (Acquisition of Land) Act, 1942, namely, those contained in s. 7.

Our County Court Letter.

Letting for Duration of War.

In a case at Chippenham County Court (*Brunt* v. *Brackenbury*) the claim was for possession of a cottage on the plaintiff's farm. The plaintiff's case was that the cottage was let to the defendant until such time as one of the plaintiff's employees should marry and require it for occupation. That condition had been fulfilled, but the defendant refused to give up possession, on the ground that the cottage had been let to him for the duration of the war. The contention for the plaintiff was that such a letting, even if made, was void for uncertainty. The cessation of hostilities was not necessarily the legal end of the war. For example, an armistice had been signed on the 11th November, 1918, and a Peace Treaty in June, 1919, but the Order in Council, declaring the war to be at an end, was not made until the 21st August, 1921. The defendant's case was that the employee in question was engaged to a nurse, and would not be able to marry (it was understood) until after the war. Accordingly the plaintiff let the cottage to the defendant for the duration of the war, as the defendant had been evacuated from London with a department of his firm, in charge of a technical branch of their business. The decision in *Great Northern Railway Co.* v. *Arnold* (1916), 33 T.L.R. 114, showed that the letting was valid. His Honour Judge Kirkhouse Jenkins, K.C., observed that the question was whether a letting for the duration of the war conflicted with the maxim that a term must be certain or capable of being rendered certain. The defendant contended that the letting was until such time as his firm returned to London, on the cessation of hostilities, and the reason for the removal of the defendant and his department to the country ceased to operate. The conclusion was that the parties intended the letting to continue until the signing of an armistice. Judgment was therefore given for the defendant, with costs.

Liability for Straying Sheep.

The above subject was considered in three cases at Torquay County Court, viz., *Cooksley* v. *Hepper*, in which the claim was for £4 17s. as damages for negligence ; *Martin* v. *Hepper*, in which the claim was for £5 5s. ; and *Marchant* v. *Hepper*, in which the claim was for £1 15s. The case for the plaintiffs was that vegetables in their gardens had been ruined by the defendant's sheep, which had strayed from a field along a private road. Evidence was given by a clerk in the borough surveyor's department that there was no entry of the adoption of the road by the corporation. It would be possible to bar entry to people other than the occupants of the houses. The hedges round the field were in a bad state of repair. The case for the defendant was that he had an arrangement with the owner of the field, but the sheep were not permanently pastured there. Although the hedges were bad, there was no negligence by the defendant. His Honour Judge Thesiger observed that it was doubtful whether the sheep had strayed upon a highway, and the defendant was negligent in leaving them where he did. Judgment was given for the plaintiffs, with costs, and leave to appeal was refused. Compare *Gaylor and Pope, Ltd.* v. *Davies* [1924] 2 K.B. 75.

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†*Newcastle-upon-Tyne, 8 (R.B.), 21, 22 (B.), 24 (J.S.)
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†*Stockton-on-Tees, 7 (J.S.)
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Circuit 3—Cumberland
HIS HON. JUDGE ALLSEBROOK
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*Carlisle, 8 (R.), 22
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HIS HON. JUDGE PEEL, O.B.E., K.C.
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†*Blackpool, 8, 10 (B.), 15, 16, 22 (J.S.)
*Chorley, 9
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†*Preston, 7, 17, 21 (J.S.), 24 (B.)

Circuit 5—Lancashire
HIS HON. JUDGE HARRISON
†*Bolton, 8, 14 (J.S.), 29
Bury, 13 (J.S.), 20
*Oldham, 9, 16, 23 (J.S.), 30
*Rochdale, 17 (J.S.), 24
*Salford, 7, 10, 15 (J.S.), 21, 28 (J.S.), 31

Circuit 6—Lancashire
HIS HON. JUDGE CROSTHWAITE
HIS HON. JUDGE PROCTER
†*Liverpool, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31
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Circuit 7—Cheshire
HIS HON. JUDGE BURGIS
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Circuit 8—Lancashire
HIS HON. JUDGE RHODES
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†*Manchester, 1, 2, 6, 7, 8, 9, 10 (B.), 13, 14, 15, 16, 20, 21, 22, 23, 24 (B.), 27, 28, 29, 30

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HIS HON. JUDGE BATT
*Ashton - under - Lyne, 10, 27 (B)
*Burnley, 16, 17
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*Macclesfield, 9, 14 (B.)
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HIS HON. JUDGE
*Bradford, 10, 22 (R.B.), 24 (J.S.), 28, 31
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*Halifax, 2, 3, 10 (R.B.)
*Huddersfield, 7, 8 (J.S.), 15 (R.B.)
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Circuit 13—Yorkshire
HIS HON. JUDGE ESSENHIGH
*Barnsley, 8, 9, 10
Glossop, 1, 15 (R.)
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*Sheffield, 2, 3, 7 (J.S.), 10 (R.), 16, 17, 23, 24, 28 (J.S.), 30, 31

Circuit 14—Yorkshire
HIS HON. JUDGE STEWART
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HIS HON. JUDGE GRIFFITH
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†*Kingston - upon - Hull 13 (R.), 14 (R.), 15, 16, 17 (J.S.), 20 (R.B.), 27 (R.)
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*Scarborough, 7, 8, 14 (R.B.)
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Circuit 17—Lincolnshire
HIS HON. JUDGE LANGMAN
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†*Boston, 9 (R.), 16, 23 (R.B.)
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Circuit 18—Nottinghamshire
HIS HON. JUDGE HILDYARD, K.C.
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*Nottingham, 2 (R.B.), 8, 9 (J.S.), 10, 15, 16, 17 (B.)
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Circuit 19–Derbyshire
HIS HON. JUDGE WILLES
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*Chesterfield, 10, 17
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HIS HON. JUDGE GALBRAITH, K.C.
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*Leicester, 6, 7, 8 (J.S.) (B.), 9 (B.), 10 (B.)
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Circuit 21—Warwickshire
HIS HON. JUDGE DALE
HIS HON. JUDGE FINNEMORE (Add.)
*Birmingham, 1, 2, 3, 6, 7, 8, 9, 10, 13, 14 (B.), 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31

Circuit 22—Herefordshire
HIS HON. JUDGE ROOPE REEVE, K.C.
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Bromyard, 15
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Circuit 23 — Northamptonshire
HIS HON. JUDGE FORBES
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*Coventry, 6, 7 (R.B.), 20
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HIS HON. JUDGE THOMAS
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†*Newport, 23, 24
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HIS HON. JUDGE CAPORN
*Dudley, 7, 14 (J.S.), 28
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*West Bromwich, 8 (J.S.), 15, 22 (J.S.), 29
*Wolverhampton, 10 (J.S.), 17, 24 (J.S.), 31

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HIS HON. JUDGE FINNEMORE
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*Hanley, 9, 23, 24
Leek, 13
Lichfield, 15
Newcastle-under-Lyme, 14
*Stafford, 10
*Stoke-on-Trent, 8
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HIS HON. JUDGE TUDOR REES
Whitechapel (*Sitting at Shoreditch County Court*), 3, 10, 17, 24, 31

Circuit 28–Shropshire
HIS HON. JUDGE SAMUEL, K.C.
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Bridgnorth,
Builth Wells,
Craven Arms,
Knighton,
Llandrindod Wells,
Llanfyllin, 17
Llanidloes, 8
Ludlow, 13
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*Newtown, 9
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*Shrewsbury, 20, 23
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Circuit 29—Caernarvonshire
HIS HON. JUDGE SIR ARTEMUS JONES, K.C.
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†*Bangor, 20
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Pwllheli, 10 (R.)
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HIS HON. JUDGE WILLIAMS, K.C.
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HIS HON. JUDGE MORRIS, K.C.
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*†Aberystwyth, 2
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†*Carmarthen, 16
†*Haverfordwest, 15
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HIS HON. JUDGE ROWLANDS
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Downham Market,
East Dereham, 8
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Fakenham, 14
†*Gt. Yarmouth, 23, 24
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†*King's Lynn, 16, 17
†Lowestoft, 10
North Walsham, 15
*Norwich, 20, 21, 22
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Circuit 33—Essex
HIS HON. JUDGE HILDESLEY, K.C.
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*Chelmsford, 27
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†*Ipswich, 3, 8, 9
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HIS HON. JUDGE AUSTIN JONES
HIS HON. JUDGE TUDOR REES (Add.)
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Circuit 35 — Cambridgeshire
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*Huntingdon, 3 (R.), 16, 31 (R.)
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*Oundle, 28
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HIS HON. JUDGE HURST
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HIS HON. JUDGE HARGREAVES
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HIS HON. JUDGE ENGELBACH
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HIS HON. JUDGE JARDINE, K.C.
HIS HON. JUDGE DRUCQUER (Add.)
HIS HON. JUDGE TUDOR REES (Add.)
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Circuit 41—Middlesex
HIS HON, JUDGE EARENGEY, K.C.
HIS HON. JUDGE TREVOR HUNTER, K.C. (Add.)
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HIS HON. JUDGE DAVID DAVIES, K.C.
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Circuit 43—Middlesex
HIS HON. JUDGE LILLEY
HIS HON. JUDGE DRUCQUER (Add.)
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HIS HON. JUDGE SIR MORDAUNT SNAGGE
HIS HON. JUDGE AUSTIN JONES (Add.)
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HIS HON. JUDGE HANCOCK, M.C.
HIS HON. JUDGE HURST (Add.)
*Kingston, 3, 7, 10, 14, 17, 21, 24, 28, 31
*Wandsworth, 1, 2, 6, 8, 9, 13, 15, 16, 20, 22, 23, 27, 29, 30

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*Canterbury, 14
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†*Rochester, 15, 16
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HIS HON. JUDGE AUSTIN JONES
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†*Portsmouth, 2, (B.), 9, 16
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HIS HON. JUDGE JENKINS, K.C.
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*Salisbury, 2
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†*Barnstaple, 21
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HIS HON. JUDGE TREVOR HUNTER, K.C.
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†*Truro, 10

†The Mayor's & City of London Court
HIS HON. JUDGE DODSON
HIS HON. JUDGE WHITELEY, K.C.
HIS HON. JUDGE THOMAS
HIS HON. JUDGE BEAZLEY
Guildhall, 1 (A), 2, 3 (J.S.), 6, 7, 8 (A.), 9, 10 (J.S.), 13, 14, 15 (A.), 16, 17 (J.S.), 20, 21, 22 (A.), 23, 24 (J.S.), 27, 28, 29, 30, 31 (J.S.)

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

To-day and Yesterday.

LEGAL CALENDAR.

29 June.—On the 29th June, 1809, Captain John Sutherland, of the armed transport "The Friends," was hanged at Execution Dock for the murder of his cabin boy. The chief witness was a negro seaman who swore that while the ship was lying in the Tagus he was on deck one evening and heard the child call him. He found him lying on the floor of the captain's cabin with a gaping wound in his stomach and Sutherland standing over him waving a naked dirk, having struck him in a fit of furious anger. Nine days later the boy died.

30 June.—John Hamilton, a kinsman of the ducal family of that name, was sent to Edinburgh to study law but fell into bad company. On an unlucky expedition to a public-house in a village near Glasgow he spent several days drinking and gaming with some friends, who eventually decamped leaving him to pay the bill. It was beyond his resources, and during an altercation the innkeeper snatched his sword away out of its scabbard. Then ensued a scuffle in which Hamilton stabbed him to death and fled leaving his coat-tail in the hands of the man's daughter. He fled to Holland, but returning to Scotland two years later on the death of his parents, he was convicted of murder and on the 30th June, 1716, beheaded by the Maiden, a predecessor of the guillotine..

1 July.—When Mr. Baron Perryn resigned from the Court of Exchequer in 1799, Mr. Alan Chambre, the Recorder of Lancaster, was chosen to succeed him, an appointment received by the Northern Circuit with "acclamations quite unprecedented." He had not, however, been called to the degree of the coif, then a necessary prelude to becoming a common law judge, and accordingly on the 1st July, 1799, a short Act of Parliament was passed authorising, for the first time a serjeant to receive his rank in the vacation, so that the office might be immediately filled. A year later he was transferred to the Common Pleas, where he remained till his resignation in 1815.

2 July.—The great Civil War disorganised not only the administration of justice but the whole life of the Inns of Court, and on the 2nd July, 1647, we find the Inner Temple Benchers considering the petitions of the four puisne butlers for an addition to their former allowances and their arrears of wages "during such time of those unnatural wars as there was no commons in this House." They also claimed board wages for the previous Lent and the under-porter had a claim in respect of a child found in Fig Tree Court. It was ultimately ordered "that the butlers should have 40s. a piece allowed them more and paid to them by the Treasurer towards their support, till the House might better afford to allow them more."

3 July.—On the 3rd July, 1749, "was tried in the Court of King's Bench an action of £1,000 brought by a foremast man of a ship of war, plaintiff, against the captain, defendant, for inflicting twenty-four lashes on the plaintiff on suspicion of theft, which not being proved and no commander having a right to punish a man with more than twelve lashes of a cat o' nine tails unless sentenced by a court martial, the jury gave a verdict for the plaintiff with £40 damages and costs of suit. On another action by a foremast man of the same ship against the captain for inflicting sixty lashes on him for neglecting several weeks to come aboard according to order, it appearing that the plaintiff had deserted before and that the captain intended it as an indulgence to prevent his being tried by a court martial, the jury gave a verdict for the defendant with costs."

4 July.—On the 4th July, 1691, there was a desperate pitched battle between the gentlemen of the Temple and the ruffians of "Alsatia," the warren of slums in Whitefriars on its eastern doorstep where the ghost of the right of sanctuary still afforded desperate men immunity from civil process. The Benchers had decided to close up the gate which led straight out into this turbulent territory, but as fast as the labourers laid the bricks an excited mob pulled them down. Headed by a Captain Winter, they opposed by force of arms the sheriff's posse which arrived on the scene to quell the tumult. There were several casualties, and one of the officers was shot dead. The Inner Temple voted his widow £10 and the authorities raided the stronghold of the Alsatians in force and arrested seventy of them. It was two years before the Captain was arrested and tried for murder.

5 July.—Thomas Marlay, formerly Chief Justice of the King's Bench in Ireland, died at Drogheda on the 5th July, 1756, while on a visit to Henry Singleton, the Master of the Rolls. Thus a contemporary poet mourned him :—

> "What, Marlay gone? O Death! how do I grudge
> Thy prize, the scholar, gentleman and judge
> Of manners easy and of taste refined,
> The sweetest picture of the sweetest mind;
> Soul of true humour yet in sense a sage,
> The Pollio and Maecenas of the age,
> Gentle he lived and as he lived he dies,
> Said 'God be with you,' and so closed his eyes."

He became Solicitor-General in 1720, Attorney-General in 1727, Chief Baron of the Exchequer in 1730, and Chief Justice of the King's Bench in 1741. He retired ten years later owing to ill-health. His daughter married James Grattan, the Recorder of Dublin, who was the father of the great Henry Grattan. At the Bar he had had no great reputation as a lawyer, but he had the distinction, rare among his colleagues, of possessing academic attainments, for in 1695 he had become a scholar of Dublin University, and in 1718 he received the degree of Doctor of Laws, *speciali gratia*. A versified "View of the Bar" in 1730 thus portrayed him :—

> "There's Marlay the neat,
> Who in primitive state
> Was ne'er for a drudge designed, sir;
> Your gibberish French he
> Takes great nonsense to be,
> And is one of your sages refined, sir."

RABBITS IN THE INNS.

Though Temple tenants have installed a thriving colony of rabbits on the site of Plowden Buildings, Lincoln's Inn is reported to be discouraging a like experiment. But that is not for want of a precedent, for in the early entries in the Black Books the "coneys" are constantly bobbing up. They first appear in the accounts for 1451–2 with 5/– "paid for a hay for catching the coneys" (a hay was a large net or snare to enclose their haunts). For the next hundred years they were a standing challenge to the poaching instincts of the younger members of the Inn, who were constantly being put out of commons and fined for yielding to the temptation. In 1496 a fine of 20s. was decreed to be imposed on anyone of the Society who should hunt or kill any coney, and it was further ordered that "no one of the Society shall carry his bow bent nor shall shoot arrows within the coney yard aforesaid under a penalty of 3s. 4d. for each offence. This order was re-enacted in 1532. Of course preserving the warrens brought its liabilities too, and in 1479 we find the Inn paying 5s. "to the dwellers at 'The Bell' in Fleet Street for damages done to their meadows by the coneys." It is all too long since the smell of hay drifted through Bell Yard. In 1565 we find 10s. paid to John Williams "for taking care of the coneys." But soon they were to be outlawed. In 1572 it was made lawful for anyone to destroy the conies "and in consideration thereof the gentlemen shall have on the hunting night a couple of conies of the charge of the House in a mess for ever hereafter and their ordinary allowances." In the same year the conies disappear with a payment of 5s. for help in levelling "one of the coney burrows."

Obituary.

MR. A. E. JACKSON.

Mr. Andrew Eric Jackson, solicitor, of Messrs. A. M. Jackson and Co., solicitors, of Hull, died on Monday, 15th June, aged sixty. Mr. Jackson was admitted in 1907 and was Under-Sheriff of Hull.

MR. J. A. LEVETT.

Mr. John Arthur Levett, solicitor, of Messrs. Levett & Son, solicitors, of 7, New Square, Lincoln's Inn, W.C.2, and Catford, S.E.6, died on Saturday, 13th June, aged seventy-six. He was admitted in 1889, and was for a long period solicitor to the Lewisham Borough Council and Clerk to the Lewisham and Lee Parochial Charities. He was formerly Treasurer of the Lewisham Deanery Church Extension Fund and a member of one of the Committees of Queen Anne's Bounty and of the Rochester and Southwark Diocesan Church Trust.

MAJOR BASIL MINOR, R.C.S.

Major Basil Minor, Royal Corps of Signals, has died from wounds in the Middle East. He was admitted in 1936, and shortly before the oubtreak of war was appointed Assistant Solicitor to Darlington Corporation.

MAJOR FRANCIS HEYWOOD MORLEY, R.A.

Major Francis Heywood Morley, Royal Artillery, has been reported killed in action in Libya, aged thirty-three. He was educated at Rugby and Trinity College, Cambridge, where he took a Law Tripos. He was admitted in 1934.

MR. W. G. PHILLIPS.

Mr. William Godfrey Phillips, solicitor, of Messrs. Stapleton and Son, solicitors, of Stamford, Lincs, died on Wednesday, 17th June, aged fifty-eight. He was admitted in 1908. In 1930 he was appointed Clerk to the Stamford Bench of Magistrates.

Honours and Appointments.

His Honour Judge Richards has retired from his office as Judge of County Courts.

The Lord Chancellor has appointed Professor Francis Raleigh Batt to be a Judge of County Courts, and has made the following arrangements upon the vacancy caused by the retirement of Judge Richards :—

His Honour Judge Burgis to be the Judge of the County Courts on Circuit No. 7 (Birkenhead, Chester, etc.).

His Honour Judge Batt to be the Judge of the County Courts on Circuit No. 10 (Burnley, Stockport, etc.).

The Law Society.

(*Continued from p.* 182.)

A number of other matters have been dealt with by the Council during the year and have been referred to in the Society's *Gazette* from time to time and commented upon in THE SOLICITORS' JOURNAL.

Among matters dealt with by the Council during the year to which reference has not been made in the Society's *Gazette* are the following:—

Solicitors' Remuneration.—The Council are considering the question of an increase in the remuneration of solicitors. A questionnaire designed to obtain the necessary data and the views of members upon the whole position has been sent to the Secretaries of the Provincial Law Societies, the Associated Law Societies of Wales, the City of London Solicitors Company and representative solicitors in London.

Reinstatement of Employees on National Service.—The Council drew the Ministry of Labour's attention to the fact that s. 14 (1) of the National Service (Armed Forces) Act, 1939, appeared to require employers to reinstate not only original employees called up for service, but substitutes engaged since the outbreak of war who were also called up.

The Ministry stated that it might not be practicable for the employer in such a case to re-employ both persons, but that the question whether the facts in any individual case constituted a change of circumstances for the purposes of the section was one which could only be determined by the courts, should the matter come before them.

The Council expressed the view that the position was far from satisfactory and urged that legislation should be promoted to deal with it before the conclusion of hostilities. The Ministry are considering this suggestion.

Examinations in Prisoner of War Camps.—The Council have agreed to participate in a scheme organised by the War Organisation of the British Red Cross for enabling articled clerks who are prisoners of war to sit for the Society's Intermediate and Final Examinations. Arrangements are being made for an Intermediate and Final Examination to be held in the autumn.

Finance Act, 1941, s. 25.—The Council have made representations which are under consideration urging an amendment of s. 25 of the Finance Act, 1941, to provide that the section should not apply to wills of persons alive when income tax was raised to 10s. in the £ or to any will expressly confirmed by codicil made after the 3rd September, 1939.

Commissions on Government Loans.—The Council made unsuccessful representations urging that commissions should be paid to solicitors in the same way as they are paid to bankers and stockbrokers upon the requisitioning of securities by the Treasury under the Defence (Finance) Regulations, 1939.

Professional Purposes Committee. (1) *Solicitors' Accounts Rules*, 1935.—Since these rules came into force the Council under the procedure provided by r. 6 have inspected solicitors books in 272 cases. In sixty-four cases the inspection disclosed that the solicitor's books of account were in order; in thirty cases, although no actual case of misappropriation was disclosed, the solicitor was given a specified time within which to produce an accountant's certificate as to his accounts; disciplinary proceedings were instituted and heard and the findings and order of the Disciplinary Committee pronounced in 125 cases, in each of which the solicitor was found guilty of professional misconduct. As a result the names of fifty-six solicitors have been struck off the Roll; thirty-eight solicitors have been suspended from practice for periods varying from six months to five years; twenty-six solicitors have been fined amounts varying from £10 to £250; four solicitors have been ordered to pay the costs of the disciplinary proceedings. In one case no order was made. The remaining cases have been otherwise disposed of or disciplinary proceedings are pending.

(2) *Proceedings against Uncertificated Solicitors and Unqualified Persons.*—Proceedings under s. 46 of the Solicitors Act, 1932, have been taken against two uncertificated solicitors, both of whom were convicted. Proceedings were also taken under this section against two unqualified persons, one of whom was convicted; the other case was dismissed under the Probation of Offenders Act. The Committee also referred to the Lord Chancellor's Department for suitable action in one case a debt-collecting form which might be regarded as an infringement of s. 178 of the County Courts Act, 1934, but it was decided that no action should be taken.

Military Service (Deferment) Committee.—During the year under review 5,336 applications, including further applications, for deferment of the date of calling up of a solicitor or solicitor's clerk were received, of which 121 were subsequently withdrawn, and 1,812 were applications for further deferment by way of certificate which did not necessitate a re-hearing, making, with the applications received in the previous year, a total of 9,500 applications. 3,198 applications were considered by the Committee during the year under review and 205 were pending on the 31st May, 1942.

Membership of the Society.—The Society has now 10,486 members, of whom 3,841 practise in London and 6,645 in the country. The number of members who joined the Society during the past year is 160 as compared with 140 during the previous year. After allowing for deaths, resignations and exclusions, the number of members shows a decrease for the year of 297.

Finance.—The Society's Income and Expenditure Account shows a deficiency on the year of £6,805. "Membership Subscriptions" is once more the principal item of revenue which has declined—this year by £1,486, and as in 1940 this is mainly due to the large number of members paying war service subscriptions. The number of admissions in 1941 fell by 127, thus reducing the income from this source by £635.

Solicitors' Clerks' Pension Fund.—This fund has presented its twelfth annual report and statement of accounts for the year ended 31st December, 1941. Colonel W. Mackenzie Smith, D.S.O., T.D., has been appointed Chairman of the Committee of Management of the fund in succession to the late Mr. Bernard H. Drake, C.B.E. The Council have appointed Mr. Douglas T. Garrett, and re-appointed Mr. Dingwall L. Bateson, M.C., as Employers' Committeemen.

Notwithstanding the War the membership has been maintained and the finances are in a satisfactory position.

Library.—Three hundred and forty volumes were added to the Library last year, and the total number of books is now 71,824.

Record and Statistical Department.—During the year 1941, certificates of death of 304 solicitors have been received, compared with 354 during 1940. The total number of deaths recorded during 1941 is 408, a decrease of 72 on the number recorded during the previous year. During the practice year ending 15th November, 1941, 4,615 London and 9,815 country practising certificates were issued compared with 5,181 and 10,703 respectively in the previous year.

National Service Department.—Since the war began the names of 320 solicitors have been submitted for various appointments in the Government service requiring specialised knowledge; 102 recommendations have been made for the transfer to other units of solicitors serving in the Forces who were apparently "misfits" and whose qualifications and experience were not being used to the best advantage; 167 enquiries have been received from solicitors on active service who wished to find other solicitors to manage their practices for them during their absence.

Enquiries were made of the Women's Auxiliary Services as to the openings for commissions for women solicitors.

Legal Education.—The Society's School of Law.—Oral classes were held during the Autumn Term, 1941, and the Spring Term, 1942, and are being continued during the Summer Term, 1942, in the subjects for the Society's Intermediate Examination and the Intermediate LL.B. Examination of the University of London. There have been correspondence, but no oral, classes in subjects for the Final Examination, and there have been correspondence classes in the subjects for the Society's Intermediate Examination. The work of the School was continued without interruption.

Men in the Forces.—One thousand nine hundred and thirteen men have been enrolled to date in the scheme for establishing and conducting correspondence courses in legal subjects for sailors, soldiers and airmen, which is open to men in the Navy, Army, Air Force and Dominion Forces stationed in England, Scotland and the Islands, Northern Ireland, Iceland and Gibraltar.

Services Divorce Department.—Since this department was set up on the 1st January, 752 cases have been allocated to it by the Poor Persons Committee and 217 petitions have been filed; 82 cases have been set down for trial.

The department is receiving all possible assistance from the Clerk of the Rules and the officials at the Divorce Registry and the help which has been given to the department by secretaries of Provincial Poor Persons Committees and solicitors throughout the country has been very greatly appreciated by the Council.

Proceedings under the Solicitors Acts, 1932 to 1939.—The Disciplinary Committee's report shows that during the period under review (*a*) on the application of the Society, the names of seven solicitors, who had previously been convicted on indictment and sentenced to terms of imprisonment, were ordered by the committee to be struck off the roll; (*b*) on the application of the Society or private individuals the names of ten solicitors (in one case in respect of this and another application referred to below) were ordered to be struck off the roll; nine solicitors were suspended from practice and ordered to pay costs; four solicitors were found guilty of professional misconduct in connection with certain breaches of the Solicitors' Accounts Rules, 1935, and penalties of £250, £250, £100 and £25, respectively, were imposed, each solicitor being ordered, in addition, to pay costs; in one case (in respect of two solicitors) the committee found the solicitors guilty of professional misconduct and ordered that the name of one be struck off the roll, he having been convicted on indictment and sentenced to a term of imprisonment, and that the other solicitor be suspended from practice; each solicitor was ordered, in addition, to pay costs; in one case whilst finding the solicitor guilty of professional misconduct, in view of his having served a term of imprisonment for his offence, the state of his health and the extreme unlikeliness of his ever again seeking to practise, they considered that justice would be met by ordering him to pay the costs; in one case (in respect of three solicitors) the committee found one solicitor guilty of professional misconduct, and ordered him to pay costs, and as no evidence was tendered in support of any allegation against the other two solicitors the committee made no order against them.

Two appeals were entered by solicitors against orders of the committee. In one case the appeal was withdrawn, and the other case had not yet been disposed of.

The four cases in which the committee had not pronounced their findings and order, and the nine cases waiting to be heard or considered have since been disposed of. In five cases the names of the solicitors were struck off the roll (four after their conviction on indictment and sentence to a term of imprisonment); in five cases the solicitors were suspended from practice; in one case the committee found the solicitor guilty of professional misconduct and imposed a penalty of £300; each of these solicitors, in addition, being ordered to pay costs. In one case the committee found that the conduct of the solicitor was deserving of the severest censure, but came to the conclusion that justice would be met by ordering him to pay the costs, and in one case the name of the solicitor was struck off the roll in respect of this application and another application referred to above.

(*Concluded.*)

Mr. Francis William Hoole, barrister-at-law, left £38,721, with net personalty £28,404. He left £500 to Minehead and West Somerset Hospital.

Notes of Cases.

CHANCERY DIVISION.

In re **Jacob's and Stedman's Contract.**

Farwell, J. 17th June, 1942.

Emergency legislation—Vendor and purchaser—Instalment of war damage contribution—Whether an "outgoing" and apportionable—War Damage Act, 1941 (4 & 5 Geo. 6, c. 12), ss. 19, 20 (2), (3), 23 (1), 35, 82.

Adjourned summons.

By an agreement dated the 23rd January, 1942, the applicant agreed to sell and the respondent to purchase a freehold dwelling-house at Camberley for £850, the day fixed for completion being the 25th February, 1942. The contract incorporated The Law Society's Conditions of Sale (1934 ed.), condition 5 (3) (*b*), of which provides that: "A purchaser shall, as from the date fixed for completion, pay all outgoings, and up to that date, all current rents and all rates, taxes, and other outgoings shall, if necessary, be apportioned, and the balance shall be paid by or allowed to a purchaser on actual completion." The property was a contributory property as defined by s. 19 of the War Damage Act, 1941. On the 1st January, 1942, the legal estate, in fee simple, was vested in the applicant, who was at that date the owner of the only proprietary interest in the property. He was liable under ss. 20 (2), (3), 23 (1) and 35 to pay the instalment of contribution of 2s. in the pound of the contributory value, payable on the 1st July, 1942. By this summons the applicant sought a declaration that the instalment payable on the 1st July, 1942, was an "outgoing" within condition 5 (3) (*b*) of The Law Society's Conditions of Sale, and that the contribution ought, as between the applicant and the respondent, to be apportioned on the footing that it was payable in respect of the year 1942.

FARWELL, J., said that the question resolved itself into a question whether this instalment was an "outgoing" within condition 5 (3) (*b*) of the conditions. If there was to be an apportionment it must be because it was provided for by the contract. It was said that the words "and other outgoings" included the instalment payable under the Act. The word "outgoings," generally speaking, did not include payments of a capital nature. Section 82 of the Act provided that these payments were to be of a capital nature. There was no ground for thinking that the word "outgoings" as used in this condition was intended to be used otherwise than in its ordinary meaning, and it must be confined to payments of a nature which were not capital payments. These instalments were capital payments under the Act, and accordingly they ought not to be apportioned. The summons must be dismissed.

COUNSEL: *Jopling; K. E. B. Kemp.*

SOLICITORS: *Gustavus Thompson & Co.*, for *Herrington & Carmichael*, Aldershot.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Ilford Corporation *v.* **Liddiard.**

Viscount Caldecote, C.J., Humphreys and Cassels, JJ. 13th May, 1942.

Emergency legislation—Civil defence—Employment—Persons to remain in employment until services "dispensed with"—Employee not entitled to dispense with own services—Civil Defence (Employment and Offences) (No. 2) Order, 1941, art. 2.

Case stated by Essex justices.

An information was preferred by the appellant corporation, through their A.R.P. controller, charging the respondent, Betty Liddiard, with contravening art. 1 of the Civil Defence (Employment and Offences) (No. 2) Order, 1941, made under reg. 29B of the Defence Regulations. The article provides: ". . . any person who is . . . in the service of a local authority and employed in any capacity as a member of either the first-aid post services or the ambulance services is required to continue in such employment until his services are dispensed with in accordance with . . . art. 2 of this Order." At the hearing of the information the following facts were established: The respondent was a paid ambulance driver employed by the corporation. On the 7th June, 1941, she gave the corporation written notice of termination of her employment, but the corporation refused to release her. On the 28th August she gave written notice tendering her resignation on the ground of ill-health, and enclosed with it a medical certificate that she was suffering from acidosis and recommending that she should seek lighter employment. On the 16th September the corporation, by their borough engineer whom they had appointed to be in charge of the service to which the respondent belonged for the purpose of dispensing with the services of its members under the Order, refused in writing to dispense with the respondent's services. On and after the 19th September she failed to report for duty. It was contended on her behalf that by the terms of her contract, as contained in the "form of application for enrolment as a volunteer" which she had signed and the "Conditions of service for volunteers" under which she served, she was entitled to terminate the contract by giving a week's notice; and that on the true construction of art. 2 (ii) of the Order of 1941 she was herself a person entitled to dispense with her services, and had lawfully done so. The corporation contended that the article could not be construed with that effect and that the respondent had committed the alleged offence. The justices accepted the respondent's contention that she was herself a person entitled to dispense with her services, and dismissed the information. The corporation appealed. By art. 2 of the Order of 1941: "The services of any person in the service of a local authority and employed as aforesaid may be dispensed with—(i) . . . where the person has given notice of his desire that his services should be dispensed with, by the Minister of Health or the person appointed by the local authority to be in charge of the service to which he belongs; or (ii) in any other case, under and in accordance with . . . any . . . contract of service . . . by the authority or person having power to terminate the employment.

VISCOUNT CALDECOTE, C.J., said that the respondent's services could under the Order be dispensed with only by the Minister of Health or the borough engineer of Ilford. She plainly came within art. 2 (i) of the Order not art. 2 (ii). The appeal must be allowed.

HUMPHREYS and CASSELS, JJ., agreed.

COUNSEL: *R. M. Hughes.* There was no appearance by or for the respondent.

SOLICITORS: *Wm. Hurd & Son*, for *The Town Clerk*, Ilford.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Parliamentary News.

HOUSE OF LORDS.

Courts (Emergency Powers) Amendment Bill [H.L.].
Read First Time. [30th June.

Post Office and Telegraph (Money) Bill [H.L.]
War Damage (Amendment) Bill [H.L.].
Read Second Time. [30th June.

HOUSE OF COMMONS.

Allied Powers (War Service) Bill [H.C.].
Read Second Time. [25th June.

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

No. 1190. **Aliens** (Widows of Members of British and Allied Forces) Order, June 19.

E.P. 1116/S.32. **Civil Defence** (Employment and Offences) No. 3 Order (Scotland), June 10.

E.P. 1173. **Civilian Clothing** (Restrictions) (No. 5) Order, 1942. General Licence, June 18.

E.P. 1143. **Consumer Rationing** (No. 8) Order, 1941. Coupon Banking Directions, June 12.

E.P. 1152. Consumer Rationing (No. 8) Order, 1941. General Direction, June 15.

E.P. 1120. Consumer Rationing (No. 10) Order, June 12.

E.P. 1121. Consumer Rationing (No. 11) Order, June 15.

E.P. 1170. **Control of Timber** (No. 25) Order, June 17.

No. 1135. **Export of Goods** (Control) (No. 27) Order, June 15.

E.P. 1198. **Feeding Stuffs** (Rationing) Order, 1942. Order, June 20, amending Directions, May 1.

E.P. 1194. **Food** (Restriction on Dealings) Order, 1941. General Licence, June 19.

E.P. 1193. Food Transport Order, 1941. Directions, June 19.

No. 1177. **Foreign Jurisdiction.** Palestinian Citizenship (Amendment) Order in Council, June 11.

E.P. 1157. **Fuel and Lighting Registration and Distribution** Order, June 12.

E.P. 1158. Fuel and Lighting Registration and Distribution (Legal Proceedings) Order, June 12.

No. 1178. **Fugitive Criminal.** Jamaica. Order in Council, June 11.

No. 1179. **Income Tax.** Relief from Double Income Tax on Agency Profits (New Zealand) Declaration, 1942. Order in Council, June 11.

E.P. 1160. **Lifting of Potatoes** (Prohibition) (No. 2) Order, June 13.

E.P. 1144. **Limitation of Supplies** (Misc.). Amendment, June 15, to General Licence, Sept. 16, *re* replacement of goods that have suffered War Damage.

E.P. 1145. Limitation of Supplies (Toilet Preparations). Amendment, June 15, to General Licence, December 18, *re* replacement of goods that have suffered War Damage.

No. 1169/S.37. **Marriage Notice** (Scotland) Order, June 16.

No. 1150/S.35. **National Health Insurance Employments** (Exclusion and Inclusion) Amendment Order (Scotland), May 27.

No. 1147. National Health Insurance (Home Guard) Regulations, May 19.

E.P. 1182. **Navigation Order** No. 14, June 18.

No. 1167. **Ploughing Grants** (Application to 1942) Order, May 11.

No. 1166. Ploughing Grants Regulations, May 11.

No. 1180. **Record Office, England.** Order in Council, June 11, approving additional rule extending to the Board of Control rules for disposal of valueless documents.

No. 1181. Record Office, England. Order in Council, June 11, approving additional rule extending to the Ministry of War Transport rules for disposal of valueless documents.

E.P. 1168. **Relaxation of Restrictions on Inshore Fishing** Order, June 8.

E.P. 1199. **Sampling of Food** Order, 1942. Amendment Order, June 20.

E.P. 1163. **Second-hand Plant** (Control of Prices) (No. 1) Order, June 18.

E.P. 1161. **Siting of Ricks** Order, June 15.

No. 1172/L.20. **Supreme Court, England.** Procedure. Rules of the Supreme Court (No. 3), June 17.

E.P. 1156/S.36 **Temporary Constables** (Emergency) (Scotland) Rules, May 27.

No. 1122. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 10) Order, June 16.